

UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Helmut Jerg  
Application Number: 10/573,457  
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Group Art Unit: 1792  
Examiner: Jason Paul Riggleman  
Title: DISHWASHER WITH COMMINUTION DEVICE

Mail Stop Appeal Brief - Patents  
Commissioner for Patents  
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**APPEAL BRIEF**

Pursuant to 37 CFR 1.192, Appellants hereby file an appeal brief in the above-identified application. This Appeal Brief is accompanied by the requisite fee set forth in 37 CFR 1.17(f).

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(1) REAL PARTY IN INTEREST

The real party in interest is BSH Bosch und Siemens Hausgeräte GmbH.

(2) RELATED APPEALS AND INTERFERENCES

There are no appeals or interferences that will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) STATUS OF CLAIMS

Claims 11-20 are pending in the present application. Claims 1-10 were canceled. Claims 17-20 are allowed. Claims 11, 17, and 19 are independent. The final rejections of claims 11-16 are being appealed.

(4) STATUS OF AMENDMENTS

There are no outstanding Amendments. The Advisory Action dated November 13, 2009, entered the Response filed on October 9, 2009.

(5) SUMMARY OF CLAIMED SUBJECT MATTER

An exemplary embodiment of the present invention, as recited by, for example, independent claim 11, is directed to a dishwasher comprising:

a washing container for receiving items to be washed by the dishwasher (see, e.g., page 1, lines 5-10; page 6, lines 14-15; Figures 1-2);

a circulatory pump (e.g., 6) for circulating a rinsing liquid into contact with items

received in the washing container (see, e.g., page 2, lines 8-10; page 6, lines 19-21); and a comminution device (e.g., 12) for comminuting rinsing residue, the comminution device (e.g., 12) and the circulatory pump (e.g., 6) being operatively interconnected in a manner such that the comminution device (e.g., 12) is temporarily driven by the circulatory pump (e.g., 6) (see, e.g., page 2, lines 21-28; page 6, lines 26-30; page 7, lines 1-10).

Another exemplary embodiment of the present invention includes a safety-friction clutch (e.g., 17, 18), wherein a drive coupling between the comminution device (e.g., 12) and the circulatory pump (e.g., 6) is made by means of the safety-friction clutch (e.g., 17, 18) (see, e.g., page 2, lines 30-32; page 3, lines 1-6 and 17-32; page 4, lines 1-9; page 7, lines 21-27).

In another exemplary embodiment of the present invention, the comminution device (e.g., 12) and the circulatory pump (e.g., 6) are operatively interconnected such that the drive of the comminution device (e.g., 12) is effected by means of an impeller (e.g., 7) of the circulatory pump (e.g., 6) (see, e.g., page 3, lines 8-15 and 28-32; page 4, lines 1-9; page 7, lines 1-19).

In another exemplary embodiment of the present invention, the comminution device (e.g., 12) and the circulatory pump (e.g., 6) are operatively interconnected such that a drive coupling between the comminution device (e.g., 12) and the circulatory pump (e.g., 6) is made by means of a connecting shaft (e.g., 8) that is a selected one of axial displaceable and non-axially displaceable (see, e.g., page 3, lines 17-32; page 4, lines 1-9; page 5, lines 4-8; page 5, lines 18-24; page 7, lines 12-27).

In another exemplary embodiment of the present invention, the connecting shaft (e.g., 8) is selectively axially displaceable into engagement with the circulatory pump (e.g., 6) such that a drive coupling between the comminution device (e.g., 12) and the circulatory pump (e.g., 6) is made by means of an axial displacement of the connecting shaft (e.g., 8) into engagement with the circulatory pump (e.g., 6) and a drive coupling between the comminution device (e.g., 12) and the circulatory pump (e.g., 6) is broken as desired by means of an axial displacement of the connecting shaft (e.g., 8) out of engagement with the

circulatory pump (e.g., 6) (see, e.g., page 3, lines 17-32; page 4, lines 1-9; page 5, lines 4-8; page 5, lines 18-24; page 7, lines 12-27).

In another exemplary embodiment of the present invention, the connecting shaft (e.g., 8) between the comminution device (e.g., 12) and the circulatory pump (e.g., 6) is selectively couplable to the hub (e.g., 17) of the impeller (e.g., 7) of the circulatory pump (e.g., 6) (see, e.g., page 3, lines 17-32; page 4, lines 1-9; page 5, lines 4-8; page 5, lines 18-24; page 7, lines 12-27; page 8, lines 1-7).

In this manner, the present invention provides a dishwasher with a comminution device (e.g., 12) that can be operated only temporarily, i.e. it can be specifically switched on and off as required. Hence, the comminution device (e.g., 12) can be activated only, for example, when coarse rinsing residue occurs in the dishwasher, such as during the pre-rinse phase or during the washing process. The temporary operation of the comminution device (e.g., 12) provides an important advantage in that the comminution device (e.g., 12) can be driven only as needed, thereby reducing the energy consumption for driving the comminution device (e.g., 12) and also protecting the comminution device (e.g., 12). See, e.g., page 2, lines 21-28.

(6) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

- a. Whether claim 12 is indefinite under 35 U.S.C. 112, second paragraph, for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
- b. Whether claims 11-16 are anticipated under 35 U.S.C. § 102(b) by the Miller et al. reference (EP 1057445).

(7) ARGUMENT

- a. Claim 12 is not indefinite under 35 U.S.C. 112, second paragraph, for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The Office Action rejects claim 12 under 35 U.S.C. 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Particularly, the Office Action asserts that the term "safety-friction clutch" (sic) in claim 12 is used by the claim to mean "clutch", while the accepted meaning is "axle-seat," and therefore, the term is deemed indefinite because the specification allegedly does not clearly redefine the term.

Appellants respectfully traverse this rejection.

M.P.E.P. § 2173.02 sets out the standard for complying with 35 U.S.C. § 112, second paragraph:

The essential inquiry pertaining to the requirement under 35 U.S.C. § 112, second paragraph, is 'whether the claims set out and circumscribe a particular subject matter with a reasonable degree of clarity and particularity. Definiteness of claim language must be analyzed, not in a vacuum, but in light of: (A) the content of the particular application disclosure; (B) the teachings of the prior art; and (C) the claim interpretation that would be given by one possessing the ordinary level of skill in the pertinent art at the time the invention was made.'

In the Response to Arguments, the Office Action states that the 112, second paragraph, rejection of claim 12 in regards to the term "safety-clutch" is maintained since the Appellant's arguments state that a clutch is "a coupling used to connect and disconnect a driving and driven part" but allegedly fail to show how what appears to be an axle-seat can be construed in such a manner.

Contrary to the assertion in the Response to Arguments of the final Office Action, Appellants respectfully submit that the Amendment filed on April 17, 2009, very clearly rebutted the rejection and explained with reference to the specification and drawings how the safety-friction clutch is used to connect and disconnect a driving and driven part, and how the term “safety-friction clutch” very clearly is being used in a manner that is consistent with the accepted meaning. Appellants respectfully submit that the Response to Arguments of the final Office Action fails to identify what information or explanation allegedly is missing.

As explained in the previous Amendment, the term “clutch” commonly is defined as “a coupling used to connect and disconnect a driving and a driven part [...] of a mechanism.” See Merriam-Webster Online Dictionary © 2009.

The specification of the present application very clearly and particularly defines the term “safety-friction clutch” in a manner that is consistent with the ordinary meaning of this term. For example, the specification at page 4, lines 3-6, very clearly states that “the free end of the connecting shaft and the hub of the impeller of the circulatory pump are preferably configured so that they form a safety-friction clutch where the drive force is transmitted by mutual friction between the connecting shaft and the impeller of the circulatory pump.” Emphasis added. See also, e.g., page 8, lines 26-30; and page 9, lines 1-6.

FIGS. 1 and 2 illustrate the free end of the connecting axle 18 and the hub 17 of the impeller 7. As shown in FIG. 1, the free end of the connecting axle 18 and the hub 17 of the impeller 7 are configured to transmit the drive force by mutual friction upon being coupled. As shown in FIG. 2, the free end of the connecting axle 18 and the hub 17 of the impeller 7 are configured to not transmit drive force upon being decoupled. See, e.g., page 7, lines 6-19. Hence, the term “safety-friction clutch” very clearly is used in a manner that is consistent with the accepted meaning.

For at least these reasons, claim 12 particularly points out and distinctly claims the subject matter which applicant regards as the invention.

Advisory Action dated November 13, 2009

The Advisory Action dated November 13, 2009, states that the 112, second paragraph, rejection of claim 12 is maintained since the term "safety-friction clutch" is not given a special definition by the applicant's specification.

Appellants respectfully submit that there is no requirement under 35 U.S.C. § 112, second paragraph, that a term be "given a special definition by the applicant's specification."

As explained above, M.P.E.P. § 2173.02 sets out the standard for complying with 35 U.S.C. § 112, second paragraph:

The essential inquiry pertaining to the requirement under 35 U.S.C. § 112, second paragraph, is 'whether the claims set out and circumscribe a particular subject matter with a reasonable degree of clarity and particularity. Definiteness of claim language must be analyzed, not in a vacuum, but in light of: (A) the content of the particular application disclosure; (B) the teachings of the prior art; and (C) the claim interpretation that would be given by one possessing the ordinary level of skill in the pertinent art at the time the invention was made.'

Hence, Appellants respectfully submit that the Advisory Action's assertion that the rejection of claim 12 under 35 U.S.C. § 112, second paragraph, is maintained since the term "safety-friction clutch" is not given a special definition by the applicant's specification is not supported by any rule, statute, or precedent.

Appellants respectfully requests reversal of this rejection.

- b. Claims 11-16 are not anticipated under 35 U.S.C. § 102(b) by the Miller et al. reference (EP 1057445

In the Office Action, claims 11-16 are rejected under 35 U.S.C. § 102(b) as being anticipated by the Miller et al. reference (EP 1057445).

The Advisory Action dated November 13, 2009, states that applicant's arguments are not persuasive and Examiner maintains that Miller teaches the limitations of claim 11. The

Advisory Action states that applicant's arguments appear to be assertions that the art does not teach the claimed invention. The Advisory Action asserts that applicant's arguments are not understood since they allegedly recite features of the claims and then features of the prior art and then assert that the art does not teach the claimed invention. Clarification is requested.

Appellants respectfully traverse this rejection.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. [...] The identical invention must be shown in as complete detail as is contained in the ... claim." M.P.E.P. § 2131.

#### Independent Claim 11

Appellants note that in the Response to Arguments, the Office Action states that the phrase "temporarily driven" appears to be vague claim language. The Office Action further states it is not known "What structural feature is being claimed by "temporarily driven"?" and asserts that "[i]t can only be assumed that the comminution device is driven by the circulatory pump; therefore, the Miller et al. rejection is maintained."

First, Appellants respectfully submit that, if claim 11 is considered vague, then a new ground of rejection under 35 U.S.C. § 112 properly should be established in a new non-final Office Action.

Second, contrary to the assertions in the Response to Arguments, Appellants respectfully submit that, when properly considered as a whole and in the context of the surrounding text of the claim, the language of claim 11 is not vague and clearly defines the structural relationship between the comminution device and the circulatory pump of the claimed invention.

Claim 11 recites "a comminution device for comminuting rinsing residue, in which the comminution device and the circulatory pump are operatively interconnected in a manner such that the comminution device is temporarily driven by the circulatory pump." These features

clearly define the structural relationship between the comminution device and the circulatory pump.

Thus, when properly considered as a whole and in the context of the surrounding text of the claim, claim 11 very clearly defines the structural features of the claimed invention.

Third, Appellants respectfully submit that the Miller et al. reference does not disclose all of the features of the claimed invention including “a comminution device for comminuting rinsing residue, in which the comminution device and the circulatory pump are operatively interconnected in a manner such that the comminution device is temporarily driven by the circulatory pump,” as recited in independent claim 11. As explained above, these features are important, for example, for switching the comminution device on and off as required, thereby reducing the energy consumption for driving the comminution device and also protecting the comminution device. See, e.g., page 2, lines 21-28.

Contrary to the assertions in the Office Action, the Miller et al. reference very clearly does not teach or suggest at least that the comminution device and the circulatory pump are operatively interconnected in a manner such that the comminution device is temporarily driven by the circulatory pump, as recited in claim 11.

Instead, the Miller et al. reference discloses that the comminution device and the circulatory pump are permanently rotatably engaged and driven. The device of the Miller et al. reference does not decouple or disengage the driving of the comminution device from the circulatory pump during operation of the pump. Indeed, the Miller et al. reference does not disclose anything that is remotely close to operating the circulatory pump with the comminution device disengaged or decoupled from the circulatory pump. Instead, the Miller et al. reference is designed to rotate the second end 258b using the drive extension 260 while accommodating axial tolerance (i.e., tolerance along the axis of rotation; see, e.g., paragraph [0029], last sentence) with regard to the end of the drive extension 260 during the operation (i.e., rotation) of the circulatory pump and the comminution device. The drive extension 260 remains rotatably engaged with the second end 258b despite axial movement of the drive

extension 260 with respect to the second end 258b. See, e.g., paragraphs [0008], [0020], [0023], [0029], [0030], and [0035].

In the Response to Arguments, the Office Action further asserts that the features of detaching couplings, etc. are not claimed in claim [11] (sic), as drafted. Appellants respectfully submit that Appellants' traversal arguments regarding the alleged "detachable coupling" are directed to the Miller et al. reference, not the language of the claims. In contrast, the comminution device and the circulatory pump are operatively interconnected in a manner such that the comminution device is temporarily driven by the circulatory pump, as recited in claim 11.

The Miller et al. reference very clearly does not teach or suggest at least that the comminution device and the circulatory pump are operatively interconnected in a manner such that the comminution device is temporarily driven by the circulatory pump, as recited in claim 11.

As explained above, the Miller et al. reference discloses that the "detachable coupling" between the second end 258b and the drive extension 260 is designed to accommodate the tolerance T in the end location of the drive extension. When read in the context of the Miller et al. reference as a whole, the teaching of accommodating the tolerance T does not mean that the second end 258b is rotatably disengaged from the drive extension 260 such that the comminution device is disengaged from the circulatory pump. Instead, in the Miller et al. reference, the second end 258b is not fixed with respect to an axial position (tolerance T) of the drive extension 260. However, the comminution device remains operatively rotatably engaged with the drive extension irrespective of the tolerance T.

For these reasons, the Miller et al. reference does not disclose at least "a comminution device for comminuting rinsing residue, in which the comminution device and the circulatory pump are operatively interconnected in a manner such that the comminution device is temporarily driven by the circulatory pump," as recited in independent claim 11.

As explained above, these features are important, for example, switching the comminution device on and off as required, thereby reducing the energy consumption for driving the comminution device and also protecting the comminution device. See, e.g., page 2, lines 21-28.

For these reasons, the Miller et al. reference does not disclose all of the features of claim 11.

Dependent Claims 12-16

Appellants respectfully submit that claims 12-16 are patentable over the Miller et al. reference based on their dependency from claim 11, as well as for the additional features recited therein. Moreover, Appellant specifically submits that the Office Action is deficient for failing to answer the substance of Appellant's traversal positions.

Where the applicant traverses any rejection, the Examiner should, if he or she repeats the rejection, take note of the applicant's argument and answer the substance of it. M.P.E.P. § 707.07(f).

The Office Action very clearly does not address and answer the substance of Appellant's traversal positions with respect to at least claims 12-14 and 16. Therefore, Appellant specifically submits that the Office Action is deficient for failing to answer the substance of Appellant's traversal positions.

Appellants reiterate these traversal positions with respect to claims 12-16 below and respectfully requests withdrawal of these rejections.

Claim 14 recites inter alia "wherein the comminution device and the circulatory pump are operatively interconnected such that a drive coupling between the comminution device and the circulatory pump is made by means of a connecting shaft that is a selected one of axial displaceable and non-axially displaceable."

The Miller et al. reference very clearly does not teach these features.

Contrary to the assertions in the Office Action, the Miller et al. reference does not teach that the connecting shaft that is a selected one of axially displaceable and non-axially displaceable. Instead, as explained above, the Miller et al. reference merely discloses that the detachable coupling between the second end 258b and the drive extension 260 extending from the impeller 230 is designed to accommodate the tolerance T in the end location of the drive extension 260. The Miller et al. reference very clearly does not disclose that the comminution device is disengaged from the drive extension 260 at any time after these parts are assembled, or that the second end 258b or the drive extension 260 are selected to be one of axially displaceable and non-axially displaceable, as recited in claim 14.

For these reasons, the Miller et al. reference does not disclose all of the features of claim 14.

The Miller et al. reference also does not teach the features of claim 15.

For example, claim 15 recites inter alia “wherein the connecting shaft is selectively axially displaceable into engagement with the circulatory pump such that a drive coupling between the comminution device and the circulatory pump is made by means of an axial displacement of the connecting shaft into engagement with the circulatory pump and a drive coupling between the comminution device and the circulatory pump is broken as desired by means of an axial displacement of the connecting shaft out of engagement with the circulatory pump.”

The Miller et al. reference very clearly does not teach these features.

In the Response to Arguments, the Office Action states that “the applicant argues that Miller et al. does not teach that the connection is broken "as desired" between the pump and drive coupling. Examiner states, Miller et al. states "the second end 258b is designed to detachably couple with a drive extension 260", paragraph [0023]. Examiner states, the detachable coupling teaches the limitations of a connection and disconnection of the axial in engagement with the pump; therefore, the applicant's arguments are not understood.”

The Miller et al. reference does not teach that the connecting shaft is axially displaceable into engagement with the pump such that the coupling is broken as desired by means of axially displacement of the shaft out of engagement with the pump.

Instead, the Miller et al. reference is designed such that the drive extension 260 rotates, or drives, the second end 258b while accommodating axial tolerance (i.e., tolerance along the axis of rotation; see, e.g., paragraph [0029], last sentence) with regard to the end of the drive extension 260 during the operation (i.e., rotation/driving) of the circulatory pump and the comminution device. The second end 258b remains rotatably engaged and driven by drive extension 260 despite axial movement of the drive extension 260 with respect to the second end 258b. See, e.g., paragraphs [0008], [0020], [0023], [0029], [0030], and [0035]. Again, the Miller et al. reference merely discloses that the detachable coupling between the second end 258b and the drive extension 260 extending from the impeller 230 is designed to accommodate the axial tolerance T in the end location of the drive extension, not to rotatably disengage the second end 258b from the drive extension 260.

For at least these reasons, the Miller et al. reference very clearly does not disclose that the connecting shaft is selectively axially displaceable into engagement with the circulatory pump such that a drive coupling between the comminution device and the circulatory pump is made by means of an axial displacement of the connecting shaft into engagement with the circulatory pump and a drive coupling between the comminution device and the circulatory pump is broken as desired by means of an axial displacement of the connecting shaft out of engagement with the circulatory pump, as recited in claim 15.

The Miller et al. reference very clearly does not disclose or suggest the subject matter defined by claims 11-16.

Appellants respectfully request reversal of this rejection.

(8) CONCLUSION

In view of the foregoing discussion, Appellants respectfully request reversal of the Examiner's rejections.

Respectfully submitted,

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CLAIMS APPENDIX

1-10 (Cancelled)

11. (Rejected) A dishwasher comprising:

a washing container for receiving items to be washed by the dishwasher;

a circulatory pump for circulating a rinsing liquid into contact with items received in the washing container; and

a comminution device for comminuting rinsing residue, the comminution device and the circulatory pump being operatively interconnected in a manner such that the comminution device is temporarily driven by the circulatory pump.

12. (Rejected) The dishwasher according to claim 11, and further comprising a safety-friction clutch, wherein a drive coupling between the comminution device and the circulatory pump is made by means of the safety-friction clutch.

13. (Rejected) The dishwasher according to claim 11, wherein the comminution device and the circulatory pump are operatively interconnected such that the drive of the comminution device is effected by means of an impeller of the circulatory pump.

14. (Rejected) The dishwasher according to claim 11, wherein the comminution device and the circulatory pump are operatively interconnected such that a drive coupling between the comminution device and the circulatory pump is made by means of a connecting shaft that is a selected one of axially displaceable and non-axially displaceable.
15. (Rejected) The dishwasher according to claim 14, wherein the connecting shaft is selectively axially displaceable into engagement with the circulatory pump such that a drive coupling between the comminution device and the circulatory pump is made by means of an axial displacement of the connecting shaft into engagement with the circulatory pump and a drive coupling between the comminution device and the circulatory pump is broken as desired by means of an axial displacement of the connecting shaft out of engagement with the circulatory pump.
16. (Rejected) The dishwasher according to claim 15, wherein the connecting shaft between the comminution device and the circulatory pump is selectively couplable to the hub of the impeller of the circulatory pump.
- 17-20. (Allowed)

ATTORNEY DOCKET NO.: 2003P01305WOUS

EVIDENCE APPENDIX

None

ATTORNEY DOCKET NO.: 2003P01305WOUS

RELATED APPEALS APPENDIX

None